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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 4

[Docket No. TTB–2011–0008; T.D. TTB–105; Re: Notice No. 122]

RIN: 1513–AB84

Revision to Vintage Date Requirements

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This document adopts, as a final rule, a proposal to amend the Alcohol and Tobacco Tax and Trade Bureau wine labeling regulations to allow a vintage date to appear on a wine that is labeled with a country as an appellation of origin. This amendment will provide greater grape sourcing and wine labeling flexibility to winemakers, both domestic and foreign, while still ensuring that consumers are provided with adequate information as to the identity and quality of the wines they purchase.

EFFECTIVE DATE: This final rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division; telephone 202–453–1039, ext. 275.

SUPPLEMENTARY INFORMATION:

Background on Wine Labeling

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120-01 (Revised), dated January 21, 2003, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Current Vintage Date Requirements

Part 4 of the TTB regulations (27 CFR part 4) sets forth the standards promulgated under the FAA Act for the labeling and advertising of wine. Section 4.27 of the TTB regulations (27 CFR 4.27) sets forth rules regarding the use of a vintage date on wine labels. Section 4.27(a) provides that vintage wine is wine labeled with the year of harvest of the grapes and that the wine “must be labeled with an appellation of origin other than a country (which does not qualify for

vintage labeling).” Rules regarding appellation of origin labeling are contained in § 4.25 of the TTB regulations (27 CFR 4.25).

In addition, § 4.27(a)(1) provides that for American or imported wines labeled with a viticultural area appellation of origin (or its foreign equivalent), at least 95 percent of the wine must have been derived from grapes harvested in the labeled calendar year. For American or imported wines labeled with an appellation of origin other than a country or viticultural area (or its foreign equivalent), § 4.27(a)(2) provides that at least 85 percent of the wine must have been derived from grapes harvested in the labeled calendar year.

The requirement that vintage wine must be labeled with an appellation of origin other than a country derives from T.D. ATF–53, published in the **Federal Register** (43 FR 37672) by TTB’s predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF), on August 23, 1978. Prior to that time the applicable regulations required that grapes used to make vintage wine must have been grown in the same “viticultural area,” a term then undefined by the regulations.

In amended Notice No. 304, a notice of proposed rulemaking preceding T.D. ATF–53 and published in the **Federal Register** (42 FR 30517) on June 15, 1977, ATF noted that the wine industry advocated that the then current requirement that 95 percent of the grapes used to make vintage wine be grown in the labeled appellation area be reduced to 75 percent. This mirrored the requirement that to bear an appellation of origin, at least 75 percent of the grapes used to make a wine must be grown in the appellation area indicated on the

label. The industry position, according to ATF, was that “vintage means only that the grapes were grown in the specified year, and that the place in which the grapes were grown is unimportant.” ATF stated in that notice that it did not agree, commenting as follows:

A good year in one part of California, for example, does not necessarily mean a good year in another part, any more than a good year in Burgundy means a good year in Bordeaux. For a vintage to be meaningful to consumers, they must have assurance that the grapes were grown in the place stated on the label. We believe that a 95 percent requirement provides greater assurance than a 75 percent requirement.

However, in T.D. ATF–53, the agency modified its position somewhat stating that it concurred with the industry position that a vintage date should refer only to the year of harvest. Accordingly, a new regulatory provision regarding appellations of origin, also adopted in T.D. ATF–53, required that the percentage of grapes required to come from the labeled appellation area depended upon whether the appellation was a viticultural area (85 percent), a State, county or foreign equivalent (75 percent), or a multicounty or multistate appellation (100 percent), but in each case without reference to vintage date usage. The rulemaking record for T.D. ATF–53 does not explain why ATF decided that vintage wine must be labeled with an appellation other than a country, but it does indicate that the agency believed that a vintage date should provide consumers information about harvest conditions.

In its most recent rulemaking action regarding vintage dating, TTB liberalized the requirements by reducing the percentage of wine derived from grapes required to be harvested in the labeled calendar year from 95 percent to

85 percent for wine labeled with an appellation of origin other than a country or a viticultural area (or its foreign equivalent). See T.D. TTB-45, published in the **Federal Register** (71 FR 25748) on May 2, 2006. The percentage remained at 95 for wines bearing a viticultural area (or its foreign equivalent) as an appellation of origin. Blending wine from different vintages could result in a more consistent product and provide a better value for consumers, according to the proponents of the earlier liberalization of vintage date labeling.

European Commission Petition

The European Commission submitted a petition requesting TTB to amend § 4.27(a) to allow the use of a country appellation for vintage labeling. The petitioner stated that the current regulation prohibiting a country appellation presents a significant difficulty for its member countries.

The petitioner noted that some of its member countries are much smaller in size than certain U.S. States, counties, and even certain American viticultural areas (AVAs). To illustrate this, it compared the areas of Malta (246 sq. km), Luxembourg (2,586 sq. km), and Austria (83,871 sq. km) with the Lodi AVA (2,230 sq. km) and the Ohio River Valley AVA (67,000 sq. km). The petitioner argued that there is no convincing rationale for a rule that allows vintage dating for a wine with an appellation of “California” (423,970 sq. km), but not for a wine labeled with the appellation “Portugal” (92,391 sq. km).

The petitioner also contrasted the vintage date rule in question with the general varietal (grape type) labeling rule contained in 27 CFR 4.23(a), under which the names of one or more grape varieties may be used as the type

designation of a grape wine only if the wine is also labeled with an appellation of origin as defined in § 4.25. Because § 4.25 includes countries within the definition of an appellation of origin, a wine labeled with a varietal designation may be labeled with a country appellation. The petitioner contended that these regulatory rules are inconsistent and that it would seem more logical to apply a coherent approach and allow vintage labeling for wines labeled with a country appellation.

Finally, the petitioner asserted that the language in Article 7(1) of the 2006 “Agreement between the United States of America and the European Community on Trade in Wine” supports the proposed change. (See http://www.ttb.gov/agreements/us_ec_wine_agreement.shtml.) TTB notes that Article 7 concerns names of origin, which include the country names of the Member States of the European Union. However, because the use of vintage dates is not specifically addressed in that provision, TTB does not consider this assertion to be particularly supportive of the proposed change.

Notice of Proposed Rulemaking

On November 4, 2011, TTB published Notice No. 122 in the **Federal Register** (76 FR 68373) proposing to amend § 4.27 to allow vintage labeling for wines labeled with a country as an appellation of origin. In addition, the proposed amendments to § 4.27 required a conforming amendment in § 4.34(b)(5) to remove the reference to the requirement that an appellation of origin for vintage wine shall be other than a country.

Comments Received

TTB received 26 comments in response to Notice No. 122, of which 22 comments favor the proposal, while 3 oppose it. One comment expresses no opinion on the proposal, but requests a revision that would permit wines to be labeled with multiple vintages, a suggestion which is beyond the scope of this rulemaking.

Supporting Comments

Comments in support of the proposal were submitted by foreign wineries and trade associations, the government of Australia, the European Commission (the petitioner), WineAmerica, one U.S. winery, and two individuals. Nearly all of the supporting comments state that the proposed revisions will provide valuable information to consumers about the age of wines labeled with a country as an appellation of origin.

Several comments contained very similar reasons for supporting the proposed rule. These comments assert that the 85% vintage labeling requirement for wines labeled with country appellations is consistent with EC and Australian rules. The comments also state that the proposal will provide consistency with TTB regulations at 27 CFR 4.23(a) and 27 CFR 4.25, which permit a wine labeled with a country appellation to bear a grape varietal name. In addition, these comments argue that the proposed revisions will eliminate “the discrepancies that arise from the nature of appellations.” Some comments also contend that for the purpose of vintage dating, large States such as Texas or Alaska and a country such as Italy should be treated equally. The comments

also assert that the existing rules “could be deemed a breach to the spirit” of the WTO Agreement on Technical Barriers to Trade.

According to the supporting comment submitted by the U.S. winery, the winery’s research found that more than 70 percent of wine drinkers consider the vintage date an indication of the wine’s age and that a third of wine drinkers consider a wine without a vintage date to be of lower quality. The winery comments that it sometimes has to blend wine from different regions in order to maintain a consistent, high quality product, but that these wines are at a disadvantage in the marketplace because of these consumer attitudes towards vintage dating.

In its comment, WineAmerica, a national association of American wineries, also states that the current rules put wines with American appellations at a competitive disadvantage because they may not use vintage dates. WineAmerica reports that this disadvantage is so great that, in years when its members have to use out-of-state fruit, they often choose to obtain Certificates of Label Exemption for intra-state commerce only in order to sell American appellation wines with vintage dates. WineAmerica argues that the proposal will place these wines on equal footing with wines labeled with multi-state, state, and county appellations and is “sensible regulatory reform” needed by its members, which it describes as family-owned businesses located throughout the United States. WineAmerica asserts that, “(I)f adopted, Notice No. 122 would benefit thousands of American businesses, allowing wineries in every state to truthfully disclose information about their products that consumers find useful.”

In its comment, the National Association of Beverage Importers (NABI), a U.S.-based trade group, states that the proposed revision may impact the market for bulk wine shipped to U.S. wineries from supplier nations. Allowing vintage dating on country appellation wines will elevate the value of these wines to their importers and to consumers. In addition, NABI states it disagrees with TTB's statement in Notice No. 122 that language in Article 7(1) of the 2006 agreement on trade in wine between the United States and the European Community (EC) is not particularly supportive of the proposal. According to NABI, the lack of a specific reference to vintage dates should not bar the powerful sense of fairness and equal treatment contained in the agreement. NABI states that it believes the agreement is significant for establishing the framework for accurately defining consumer information on wine imported from the EC and that "[v]intage dating of country origin product is consistent with that framework."

Opposing Comments

Opposition to the proposal came from the California Association of Winegrape Growers (CAWG), the Lodi District Grape Growers Association, and one U.S. winery. Both associations state that vintage dates should not be allowed on wines labeled with a country for an appellation absent "stricter standards of origin for wine labeled with the American appellation of origin." They note that wines labeled with an EU country name must consist entirely of wine from that country, while TTB regulations permit wine labeled with the American appellation of origin to contain up to 25 percent wine from other countries. This, they state, misleads the consumer and places U.S. growers at a

disadvantage. Both organizations note that California law requires a wine claiming a California appellation of origin to consist wholly of California wine, and CAWG notes that Oregon law requires that all grapes used in the production of a wine with an Oregon appellation be grown in Oregon. Both organizations urge TTB to act on a current petition submitted by CAWG and other grape growers associations which proposes that wines bearing American appellations of origin must contain only U.S. wine.

The comment from the winery that does not support the proposed rule states that the proposal will dilute the vintage date standard and confuse consumers, stating, "It makes a huge difference if the wine is from an AVA specifically, or if it would just say American. * * * Most people who are not avid wine drinkers, identify with AVAs. Most wine drinkers also identify with a year date. Let's not make more confusion to the general public than what is necessary. Let's keep the standards high."

TTB Finding

After careful review of the comments discussed above, TTB has determined that it is appropriate to adopt without change the proposed regulatory amendments contained in Notice No. 122. The majority of commenters expressed support for the proposed rule. While TTB understands the winery's argument that applying a vintage date to a large area could undermine the value of a vintage date statement, TTB believes that vintage dates can provide useful, truthful information to consumers. TTB considers the concerns expressed by CAWG and the Lodi District Grape Growers Association about the percentage of

foreign wine permitted in wine labeled with the American appellation of origin to be a separate issue outside the scope of this rulemaking..

Regulatory Flexibility Act

TTB certifies under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this final rule will not have a significant economic impact on a substantial number of small entities. These amendments merely provide optional, additional flexibility in wine labeling decisions. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

This final rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

Jennifer Berry of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

List of Subjects in 27 CFR Part 4

Administrative practice and procedure, Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

Amendments to the Regulations

For the reasons discussed in the preamble, TTB amends 27 CFR, chapter I, part 4 as set forth below:

PART 4—LABELING AND ADVERTISING OF WINE

1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

2. Section 4.27 is amended:

- a. In the second sentence of the introductory text of paragraph (a), by removing the words “other than a country (which does not qualify for vintage labeling)”; and

- b. In paragraph (a)(2), by removing the words “country or”.

3. Section 4.34(b)(5) is amended by removing the last sentence.

Signed: April 30, 2012

John J. Manfreda

Administrator.

Approved: May 14, 2012

Timothy E. Skud

Deputy Assistant Secretary
(Tax, Trade, and Tariff Policy).